

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

PATRICK SIMER,

Plaintiff,

v.

CASE NO:
HON:

OAKLAND COUNTY, ADAM LOWE, MARK GAREY, NICHOLAS TALIERICO, and NICHOLAS CHERRY, in their individual and official capacities,

Defendants,

<p><u>CHRISTOPHER TRAINOR & ASSOCIATES</u> CHRISTOPHER J. TRAINOR (P42449) AMY J. DEROUIN (P70514) Attorneys for Plaintiff 9750 Highland Road White Lake, MI 48386 (248) 886-8650 / (248) 698-3321 (fax) shanna.suver@cjtrainor.com amy.derouin@cjtrainor.com</p>	
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COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, **PATRICK SIMER**, and by and through his attorneys, CHRISTOPHER TRAINOR & ASSOCIATES, and for his Complaint against the above-named Defendants states as follows:

1. Plaintiff is a resident of the Village of Clarkston, County of Oakland, State of Michigan.
2. Defendant OAKLAND COUNTY is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan.
3. Defendants LOWE, GAREY, TALIERICO, and CHERRY were and/or are correctional officers and/or deputies employed by Defendant OAKLAND COUNTY and/or the Oakland County Jail and were acting under the color of law, in their individual and official capacities, and within the course and scope of their employment at all times mentioned herein.
4. All relevant events giving rise to this lawsuit occurred in the County of Oakland, State of Michigan.
5. This lawsuit arises out of Defendants' violation of Plaintiff's federal constitutional rights as secured by the Fourth and Fourteenth Amendments as they applies to the States through the Fourteenth Amendment to the United States Constitution and consequently, Plaintiff has a viable claim for damages under 42 U.S.C. § 1983.
6. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1331 [federal question] and 28 U.S.C. § 1343 [civil rights].
7. That the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), not included interest, costs, and attorney fees.

FACTS

8. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
9. On December 29, 2020, Plaintiff was arrested for operating a motor vehicle under the influence of alcohol, handcuffed, and transported to the Oakland County Jail.
10. Plaintiff was at all times compliant and non-resistant with his arrest and was transported to the Oakland County Jail without incident.
11. While being booked into the Oakland County Jail, Plaintiff was subject to unreasonable and excessive force by the individual Defendants including, but not limited to, being slammed face-first onto the floor, being kneed in the head, and having his arms (handcuffed behind his back) forcibly lifted over his head.
12. That after being assaulted and booked into the Oakland County Jail, the individual Defendants stripped Plaintiff of his clothes and placed him, naked, in a solitary cell.
13. Despite Plaintiff explaining that he was having difficulty breathing, the individual Defendants provided Plaintiff with no medical treatment.
14. As a result of Defendants' unlawful actions and/or inactions, Plaintiff sustained injuries and damages.
15. That during the course of the aforementioned events, Plaintiff was a pretrial detainee.

COUNT I
VIOLATIONS OF THE FOURTEENTH AMENDMENT

16. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.

17. The Due Process Clause of the Fourteenth Amendment prevents the use of excessive physical force against pretrial detainees and imposes a duty on police officials to take reasonable measures to guarantee the safety of those under their care.

18. Individual Defendants violated Plaintiff's clearly established and federally protected rights as set forth under the United States Constitution and the Amendments thereto, including, but not limited to, the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures mainly to be free from excessive use of force, when they employed unnecessary and unreasonable force which resulted in significant injuries to Plaintiff.

19. At all relevant times herein, Defendants acted under color of law, within the scope and course of their employment, and in their official and individual capacities.

20. The actions of Defendants were at all times objectively unreasonable in violation of Plaintiff's clearly established rights under the Fourteenth Amendment to the

United States Constitution which proximately resulted in significant injuries to Plaintiff.

21. Defendants are not entitled to qualified immunity because they violated Plaintiff's clearly established Fourteenth Amendment right to be free from excessive use of force.

22. As a proximate result of the violations and/or deprivations of Plaintiff's constitutional rights by Defendants, Plaintiff has a viable claim for compensatory and punitive damages pursuant to 42 U.S.C. § 1983 together with costs, interests, and attorney fees as set forth in 42 U.S.C. § 1988.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an award in his favor and against Defendants in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) exclusive costs, interest, and attorney fees.

COUNT II
CONSTITUTIONAL VIOLATIONS – DEFENDANT OAKLAND COUNTY

23. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.

24. Defendant OAKLAND COUNTY permitted customs, practices, and/or policies which resulted in the violations of Plaintiff's constitutional rights as complained of herein.

25. These customs, practices, and/or policies included, but were not limited to, the following:

- a. Failing to adequately train and/or supervise its corrections officers so as to prevent violations of citizens' constitutional rights;
- b. Failing to adequately train and/or supervise corrections officers regarding the proper use of force; and
- c. Failing to adequately supervise, review, and/or discipline corrections officers whom Defendant OAKLAND COUNTY knew or should have known were violating or were prone to violate citizens' constitutional rights, thereby permitting and/or encouraging its corrections officers to engage in unlawful conduct.

26. Defendant OAKLAND COUNTY's conduct was so reckless so as to demonstrate deliberate indifference for whether an injury resulted.

27. Defendant OAKLAND COUNTY's acts and/or indifference and/or omissions were the direct and proximate cause of Plaintiff's injuries.

28. The facts as set forth in the preceding paragraphs constitute a violation of Plaintiff's constitutional rights; and pursuant to 42 U.S.C. § 1983, Plaintiff has a viable claim for compensatory and punitive damages, costs, and attorney fees as set forth in 42 U.S.C. § 1988.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an award in his favor and against Defendants in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of costs, interest, and attorney fees.

Respectfully Submitted,
CHRISTOPHER TRAINOR & ASSOCIATES

s/ Christopher Trainor
CHRISTOPHER J. TRAINOR (P42449)
AMY J. DEROUIN (P70514)
Attorneys for Plaintiff
9750 Highland Road
White Lake, MI 48386
(248) 886-8650
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Dated: January 4, 2022
CJT/jaa

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DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, **PATRICK SIMER**, by and through his attorneys, CHRISTOPHER TRAINOR & ASSOCIATES, and hereby makes a Demand for Trial by Jury in the above-captioned matter.

Respectfully Submitted,
CHRISTOPHER TRAINOR & ASSOCIATES

s/ Christopher Trainor

CHRISTOPHER J. TRAINOR (P42449)
AMY J. DEROUIN (P70514)
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